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PATENT APPLICATION
ATTORNEY DOCKET NO. 10006968-1

**IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE**

Inventor(s): Jon A. Brewster, et al.

Confirmation No: 8647

Application No: 09/916,894

Examiner: Joseph R. Pokrzywa

Filing Date: July 26, 2001

Group Art Unit: 2625

SUBJECT: INTELLIGENT PRINTING BY A KIOSK

COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

APPEAL BRIEF

Appellant herein sets forth his reasons and arguments for appealing the Examiner's final rejection of claims in the above-identified case.

REAL PARTY IN INTEREST

This Patent Application has been assigned to Hewlett-Packard Development Company, L.P., a Texas Limited Partnership having its principal place of business in Houston, Texas.

10/04/2006 HDEMESS1 00000054 082025 09916894

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RELATED APPEALS AND INTERFERENCES

Appellant is aware of no related appeals or interferences.

STATUS OF CLAIMS

Claims 1 through 22 are pending in the case.

Claims 9 through 11, 21 and 22 are allowed.

Claims 7, 8 and 17 through 19 are objected to.

Claims 1 through 6, 12 through 16 and 20 are rejected.

The appealed claims are claims 1 through 6, 12 through 16 and 20.

STATUS OF AMENDMENTS

After the final rejection, Appellant filed an Amendment dated June 28, 2006 that removed a stray comma from claim 1. The Examiner indicated the Amendment will be entered upon filing an appeal. See page 2 of the Advisory Action dated August 8, 2006.

SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1:

Claim 1 sets out a publication delivery system (11) that comprises a printing mechanism (34) and a response system (14-17,33). See Figure 1, Figure 2 and the Specification at page 3, lines 19 through 22 and page 5, lines 7 and 8. The printing mechanism (34) is for printing copies of a publication (41,52) before copies are requested by potential customers so that after a copy

of the printed publication (41,52) is requested by a customer, the customer can receive the copy of the printed publication (41,52) without having to wait for the printing mechanism (34) to print the copy of the publication (41,52). See Figure 5 and the Specification at page 6, lines 14 through 19. The response system (14-17,33) monitors activity level around a physical location of the publication delivery system (11) in order to detect proximity of potential customers. See Figure 1 and the Specification at page 3, lines 21 through 24. Timing and number of copies of the publication (41,52) printed by the printing mechanism (34) are based on the activity level detected by the response system (14-17,33). An increased detected activity level results in an increased number of copies of the publication (41,52) being printed. See the Specification at page 3, line 24 through page 4, line 7 and page 4, line 24 through page 5, line 1.

Claim 12:

Claim 12 sets out a method for distributing a publication (41,52) by an automated publication delivery system (11). Activity around a physical location of the automated publication delivery system (11) is monitored in order to detect proximity of potential customers. See Figure 1 and the Specification at page 3, lines 21 through 24. In response to detection of an increased activity level around the physical location of the automated publication delivery system (11), additional copies of the publication (41,52)

are printed for distribution so that copies are already printed before being ordered by customers so that after a copy of the printed publication (41,52) is ordered by a customer, the customer can receive the copy of the printed publication (41,52) without having to wait for the printing mechanism (34) to print the copy of the publication (41,52). See Figure 5 and the Specification at page 6, lines 14 through 19, at page 3, line 24 through page 4, line 7 and at page 4, line 24 through page 5, line 1.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- (1) Claims 1, 2, 6, 12, 13 and 20 stand rejected under 35 U.S.C. § 102 (e) as being anticipated by USPN 6,322,262 (*Trosterud*).
- (2) Claims 3 through 5 and 14 through 16 stand rejected under 35 U.S.C. § 103 (a) as being unpatentable over *Trosterud* in view of 5,305,197 (*Axler*).

ARGUMENT

35 U.S.C. § 102 (E) REJECTION OVER TROSTERUD

A. Overview of Errors in the Rejection

Criteria for a Rejection under 35 U.S.C. § 103

The criteria for a rejection under 35 U.S.C. § 102(b) has been defined by the courts and confirmed by the U.S. Patent and Trademark Office. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."

Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

The Examiner has failed to show that each and every element set forth in the claims is found either expressly or inherently in *Trosterud*. Below, Applicant points out subject matter within each rejected independent claim that is not disclosed by *Trosterud*. On the basis of this, Applicant believes all the claims are patentable over *Trosterud*.

B. Discussion of independent claim 1

1. Printing copies before copies are requested by potential customers:

Claim 1 sets out a publication delivery system. A printing mechanism prints copies of a publication before copies are requested by potential customers so that after a copy of the printed publication is requested by a customer, the customer can receive the copy of the printed publication without having to wait for the printing mechanism to print the copy of the publication. This is not disclosed or suggested by the *Trosterud*.

In *Trosterud* a customer pays first. Then the customer chooses a desired variant of the publication. After the choice has been made, the printing process starts. See *Trosterud* at column 5, lines 42 through 48. Thus in

Trosterud, a publication is printed only after the publication has been paid for and chosen by a customer.

The Examiner has cited column 5, lines 16 through 55 of *Trosterud* as disclosing that a customer can receive a copy of a printed publication without having to wait for the printing mechanism to print the copy of the publication. This is incorrect. *Trosterud* specifically discloses that printing does not start until after a customer has paid for and chosen a publication. See *Trosterud* at column 5, lines 42 through 48. Thus at column 5, lines 16 through 55, *Trosterud* discloses that a customer has to wait for a printing mechanism to print a copy of the publication before the customer can receive the copy of the publication.

2. Response System:

The publication delivery system set out in claim 1 also includes a response system that monitors activity level around a physical location of the publication delivery system in order to detect proximity of potential customers. Timing and number of copies of the publication printed by the printing mechanism are based on the activity level detected by the response system. An increased detected activity level results in an increased number of copies of the publication being printed. This is not disclosed or suggested by the *Trosterud*.

In *Trosterud*, a customer first pays. Then the customer chooses a desired variant of the publication. After the choice has been made, the printing process starts. See *Trosterud* at column 5, lines 42 through 48. Thus, in *Trosterud*, a publication is printed only after the publication has been purchased by a customer. *Trosterud* does not utilize a response system that monitors activity level around a physical location of the publication delivery system in order to detect proximity of potential customers. In *Trosterud*, timing and number of copies of the publication printed by the printing mechanism are not based on the activity level detected by the response system, but on payment and choices made by a customer using push buttons on the front 2 of the machine. See *Trosterud* at column 5, lines 42 through 48.

The Examiner has suggested that a response system is disclosed by *Trosterud* at column 4, lines 39 through 51 and column 5, lines 56 through 65. This is incorrect.

At column 4, lines 39 through 51, *Trosterud* discusses advertisements printed along with the publications. When printing a publication (after paid for and chosen by a customer), advertisements are included in the publication. The number of times an advertisement is included in a printed publication paid for and printed out for a customer is tracked. After being printed a predetermined number of times, the advertisement can be replaced by another advertisement.

At column 5, lines 56 through 65, *Trosterud* discloses that the number of copies printed is registered. That is, each time a customer purchases a publication and the publication is printed, the vending machine keeps track of the printing.

Trosterud at column 4, lines 39 through 51 and column 5, lines 56 through 65 does not disclose or suggest a response system that monitors activity level around a physical location of a publication delivery system in order to detect proximity of potential customers. *Trosterud* at column 4, lines 39 through 51 and column 5, lines 56 through 65 does not disclose or suggest timing and number of copies of a publication printed by a printing mechanism are based on the activity level detected by a response system. *Trosterud* at column 4, lines 39 through 51 and column 5, lines 56 through 65 does not disclose or suggest that increased detected activity level results in an increased number of copies of a publication being printed.

3. Response to Additional Arguments Raised by the Examiner

a. Speed of printing is not the issue

In the Advisory Action dated August 8, 2006, the Examiner has raised the following argument:

First, the vending machine prints copies of the publication for numerous readers, as read in column 4, lines 17 through 51. Thus, copies are printed (for other customers) by the printing mechanism before copies are requested by new potential customers. Continuing, *Trosterud* states in column 3, lines 1 through 4 that in a previous invention, "the customer must wait

three to five minutes for the print-out of the desired information, whilst with the present invention it will only take seconds."

Further, in column 5, lines 35-41, *Trosterud* states that "all rasterizing, warming up and so forth should have been carried out before the last part of the printing process starts so that the shortest time possible passes from the purchaser choosing a desired publication to it being ready-printed." Thus the customer does not have to wait the three to five minutes for printing, as the prior art systems require. While this "without having to wait" time may be different than the current invention, the customer of *Trosterud*'s invention still can "receive a copy of the printed publication without having to wait for the printing mechanism to print the copy of the publication" after a copy of the printed publication is requested, as the claim is currently worded."

As Appellant has pointed above, in *Trosterud* a customer pays first.

Then the customer chooses a desired variant of the publication. After the choice has been made, the printing process starts. See *Trosterud* at column 5, lines 42 through 48. Thus in *Trosterud*, a publication is printed only after the publication has been paid for and chosen by a customer.

The Examiner appears to be arguing that other systems take a longer time to print than *Trosterud*. Compared with the prior art, *Trosterud* apparently has a relatively quick printing process.

However, the limitation set out in claim 1 does not have to do with how fast a copy of publication is printed. It has to do with when the copy is printed relative to when the copy is ordered.

In claim 1, a printing mechanism prints copies of a publication before copies are requested by potential customers so that after a copy of the printed publication is requested by a customer, the customer can receive the copy of the

printed publication without having to wait for the printing mechanism to print the copy of the publication. The clause “so that after a copy of the printed publication is requested by a customer...” is a result clause indicating that as a result of the printing mechanism printing copies of a publication before copies are requested by potential customers, the customer can receive the copy of the printed publication without having to wait for the printing mechanism to print the copy of the publication. It is clear, therefore that “not having to wait for the printing mechanism to print the copy of the publication” refers not to how fast a copy is printed, but when the copy is printed (i.e., before copies are requested by potential customers).

In *Trosterud* a customer pays first. Then the customer chooses a desired variant of the publication. After the choice has been made, the printing process starts. See *Trosterud* at column 5, lines 42 through 48. Thus in *Trosterud*, a publication is printed only after the publication has been paid for and chosen by a customer. The speed at which *Trosterud* prints the publication is not relevant to the language of claim 1.

b. All limitations must be considered meaningful

In the Advisory Action dated August 8, 2006, the Examiner has argued that in the claims, the monitored activity level and the detected activity level are both equal to the number of copies being printed.

Specifically the Examiner has made the following argument:

... Thus, the timing and number of copies printed is based on the monitored activity level, being interpreted as the print count. Also, since the detected activity level is interpreted as the print count, when there is an increased detected activity level, there is an increased number of copies that are being printed.

The Examiner's interpretation of "detected activity level" as being the same as "print count" (or number of copies printed) removes all meaning from the limitation set out in claim 1. For example, when "number of copies printed" is substituted for detected activity level in claim 1 of the present case, claim 1 reads as follows:

...wherein timing and number of copies of the publication printed by the printing mechanism are based on the number of copies printed by the response system, wherein an increased number of copies printed, results in an increased number of copies of the publication being printed.

As can be seen from the above, the Examiner's interpretation of "detected activity level" as being the same as "print count" makes this limitation meaningless. For example, stating that "an increased number of copies results in an increased number of copies of the publication being printed" is a redundant phrase with no meaning

The courts have indicated that all limitations of a claim must be considered meaningful. See D.O.C.C. Inc. v. Spin-tech Inc., 93 Civ. 4679, 36 U.S.P.Q.2d 1145, 1151 (N.Y. 1994). The Examiner's proposed interpretation removes all meaning from the pertinent limitations.

Further, the Examiner's interpretation of "detected activity level" as being the same as "print count" is an unreasonable interpretation that would not be made by person of ordinary skill in the art.

C. Discussion of independent 12

Claim 12 sets out a method for distributing a publication by an automated publication delivery system. Activity level around a physical location of the publication delivery system is monitored in order to detect proximity of potential customers. This is not disclosed or suggested by *Trosterud*.

The Examiner has suggested that monitoring activity level around a physical location of the publication delivery system in order to detect proximity of potential customers is disclosed by *Trosterud* at column 4, lines 39 through 51 and column 5, lines 56 through 65. This is incorrect.

At column 4, lines 39 through 51, *Trosterud* discusses advertisements printed along with the publications. When printing a publication (after paid for and chosen by a customer), advertisements are included in the publication. The number of times an advertisement is included in a printed publication paid for and printed out for a customer is tracked. After being printed a predetermined number of times, the advertisement can be replaced by another advertisement.

At column 5, lines 56 through 65, *Trosterud* discloses that the number of copies printed is registered. That is, each time a customer purchases a publication and the publication is printed, the vending machine keeps track of the printing.

As is clear from the language of *Trosterud* at column 4, lines 39 through 51 and column 5, lines 56 through 65, these cited sections of *Trosterud* do not disclose or suggest monitoring activity level around a physical location of the publication delivery system in order to detect proximity of potential customers.

Claim 12 also sets out that in response to detection of an increased activity level around the physical location of the automated publication delivery system, additional copies of the publication are printed for distribution so that copies are already printed before being ordered by customers so that after a copy of the printed publication is ordered by a customer, the customer can receive the copy of the printed publication without having to wait for the printing mechanism to print the copy of the publication. This is not disclosed or suggested by the *Trosterud*.

The Examiner has suggested this is disclosed by *Trosterud* at column 5, lines 16 through 55. This is incorrect.

In *Trosterud*, a customer pays first. Then the customer chooses a desired variant of the publication. After the choice has been made, the printing process starts. See *Trosterud* at column 5, lines 42 through 48. Thus in *Trosterud*, a publication is printed only after the publication has been purchased by a customer. This is in clear contradiction to the limitation in claim 12 that in response to detection of an increased activity level around the physical location of the automated publication delivery system, additional copies of the publication are printed for distribution so that copies are already

printed before being ordered by customers so that after a copy of the printed publication is ordered by a customer, the customer can receive the copy of the printed publication without having to wait for the printing mechanism to print the copy of the publication.

35 U.S.C. § 103 (A) REJECTION OVER TROSTERUD IN VIEW OF AXLER

Claims 3 through 5 and 14 through 16 stand rejected under 35 U.S.C. § 103 (a) as being unpatentable over *Trosterud* in view of *Axler*. Claims 3 through 5 and 14 through 16 are each dependent claims and these dependent claims are patentable based on the patentability of their underlying independent claims. See the discussion above.

Further, *Axler* does not disclose or suggest the limitations within independent claims 1 and 12 lacking from *Trosterud*. For example, in *Axler*, a consumer selects a particular displayed coupon through the keypad. That coupon is then printed by the printer. See *Axler* at column 7, lines 16 through 18. *Axler* does not disclose or suggest that a printing mechanism prints copies of a publication before copies are requested by potential customers so that after a copy of the printed publication is requested by a customer, the customer can receive the copy of the printed publication without having to wait for the printing mechanism to print the copy of the publication.

CONCLUSION

For all the reasons discussed above, Appellant believes the rejection of the claims was in error and respectfully requests that the rejection be reversed.

Respectfully submitted,

JON A. BREWSTER, ET AL.

By 
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September 26, 2006
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CLAIMS APPENDIX

1. (Previously Presented) A publication delivery system comprising:
 - a printing mechanism for printing copies of a publication before copies are requested by potential customers so that after a copy of the printed publication is requested by a customer, the customer can receive the copy of the printed publication without having to wait for the printing mechanism to print the copy of the publication; and
 - a response system that monitors activity level around a physical location of the publication delivery system in order to detect proximity of potential customers, wherein timing and number of copies of the publication printed by the printing mechanism are based on the activity level detected by the response system, wherein an increased detected activity level, results in an increased number of copies of the publication being printed.
2. (Original) A publication delivery system as in claim 1 wherein the publication delivery system is a kiosk and the publication is a newspaper.
3. (Original) A publication delivery system as in claim 1 wherein the response system includes a microphone that is used to monitor noise level.

4. (Original) A publication delivery system as in claim 1 wherein the response system includes an optical sensor to detect movement near the publication delivery system.

5. (Original) A publication delivery system as in claim 1 wherein the response system includes a motion detector used to detect movement near the publication delivery system.

6. (Original) A publication delivery system as in claim 1 additionally comprising:

network access, the print delivery system using the network access to update content of the publication.

7. (Previously Presented) A publication delivery system as in claim 1 additionally comprising:

a storage area that stores printed copies of the publication; and,
a time stamp reader for reading a time stamp on a most recently printed copy of the publication stored in the storage area, wherein the print delivery system uses the time stamp to determine freshness of the most recently printed copy of the publication stored in the storage area.

8. (Original) A publication delivery system as in claim 7 wherein the time stamp is a bar code and the time stamp reader is a bar code reader.

9. (Previously Presented) A method for distributing a publication by an automated kiosk, comprising the following:

(a) in response to a customer ordering a publication, performing the following by the kiosk:

(a.1) checking a time stamp on a most recently printed publication stored in a storage area, the storage area being used to store already printed copies of the publication so that after the publication is ordered by the customer, the customer can receive a printed copy of the publication without having to wait for a printing mechanism to print the copy of the publication,

(a.2) determining whether a fresher version of the printed publication is electronically available,

(a.3) when in (a.2) it is determined that a fresher version of the printed publication is not electronically available, delivering to the customer the most recently printed publication stored in the storage area, and

(a.4) when in (a.2) it is determined that a fresher version of the printed publication is electronically available and the customer indicates a willingness to wait for printing, obtaining the fresher version of the printed

publication, and printing out the fresher version of the publication for delivery to the customer.

10. (Previously Presented) A method as in claim 9 wherein (a.2) comprises the following:

contacting, by the kiosk, an electronic publisher of the publication, wherein the electronic publisher performs the following:

comparing a checksum for a most recently generated version of the publication with a checksum for the most recently printed publication stored in the storage area, and

indicating to the kiosk the results of the comparison.

11. (Previously Presented) A method as in claim 9 wherein the time stamp is a bar code and (a.1) is performed with use of a bar code reader.

12. (Previously Presented) A method for distributing a publication by an automated publication delivery system, comprising the following:

(a) monitoring activity around a physical location of the automated publication delivery system in order to detect proximity of potential customers; and,

(b) in response to detection of an increased activity level around the physical location of the automated publication delivery system, printing

additional copies of the publication for distribution so that copies are already printed before being ordered by customers so that after a copy of the printed publication is ordered by a customer, the customer can receive the copy of the printed publication without having to wait for the printing mechanism to print the copy of the publication.

13. (Original) A method as in claim 12 wherein the automated publication delivery system is a kiosk and the publication is a newspaper.

14. (Previously Presented) A method as in claim 12 wherein in (a) monitoring is performed using a microphone to monitor noise level.

15. (Previously Presented) A method as in claim 12 wherein in (a) monitoring is performed using an optical sensor to detect movement near the automated publication delivery system.

16. (Previously Presented) A method as in claim 12 wherein in (a) monitoring is performed using a motion detector to detect movement near the automated publication delivery system.

17. (Previously Presented) A method as in claim 12, additionally comprising the following:

(c) in response to a customer requesting the publication, performing the following:

(c.1) checking a time stamp on a most recently printed publication stored in a storage area,

(c.2) determining whether a fresher version of the printed publication is electronically available,

(c.3) when in (c.2) it is determined that a fresher version of the printed publication is not electronically available, delivering to the customer the most recently printed publication stored in the storage area, and

(c.4) when in (c.2) it is determined that a fresher version of the printed publication is electronically available, obtaining the fresher version of the printed publication, and printing out the fresher version of the publication for delivery to the customer.

18. (Previously Presented) A method as in claim 12 wherein (c.2) comprises the following:

contacting, by the automated publication delivery system, an electronic publisher of the publication, wherein the electronic publisher performs the following substeps:

comparing a checksum for a most recently generated version of the publication with a checksum for the most recently printed publication stored in the storage area, and

indicating to the automated publication delivery system the results of the comparison.

19. (Previously Presented) A method as in claim 17 wherein the time stamp is a bar code and (c.1) is performed with use of a bar code reader.

20. (Previously Presented) A method as in claim 12 additionally comprising the following:

(c) using network access by the automated print delivery system to update content of the publication.

21. (Previously Presented) A publication delivery system comprising:
a printing mechanism for printing a publication;
a response system that monitors activity around a physical location of the publication delivery system, wherein timing and number of printed publications printed by the printing mechanism are based on the activity detected by the response system;
a storage area that stores printed publications, the storage area being used to store already printed copies of the printed publication so that after a printed copy of the printed publication is requested by a customer, the customer can receive an already printed copy of the printed publication without

having to wait for the printing mechanism to print the already printed copy of the publication; and,

 a time stamp reader for reading a time stamp on a most recently printed publication stored in the storage area, wherein the print delivery system uses the time stamp to determine freshness of the most recently printed publication stored in the storage area;

 wherein in response to the customer requesting the publication, the time stamp reader checks a time stamp on a most recently printed publication stored in a storage area to determine whether a fresher version of the printed publication is electronically available and when a fresher version of the printed publication is electronically available, obtains the fresher version of the printed publication, and prints the fresher version out on the printing mechanism for delivery to the customer.

22. (Original) A publication delivery system as in claim 21 wherein the customer is given an option to wait for printing out of the fresher version of the publication or to immediately receive an already printed copy of the publication.

EVIDENCE APPENDIX

No evidence under §§ 1.130, 1.131, or 1.132 is relied upon by Appellant in the appeal.

RELATED PROCEEDINGS APPENDIX

There are no related decisions rendered by a court or the Board.

OCT 03 2006



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AF/
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PATENT APPLICATION

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Mail Stop Appeal Brief-Patents
Commissioner For Patents
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TRANSMITTAL OF APPEAL BRIEF

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on August 30, 2006.

The fee for filing this Appeal Brief is (37 CFR 1.17(c)) \$500.00.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

(a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d)) for the total number of months checked below:

1st Month
\$120

2nd Month
\$450

3rd Month
\$1020

4th Month
\$1590

The extension fee has already been filed in this application.

(b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account 08-2025 the sum of \$ 500. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees. A duplicate copy of this sheet is enclosed.

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Respectfully submitted,

Jon A. Brewster, et al.

By Douglas L. Weller

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